

REMARKS

Applicants submit this Amendment in reply to the final Office Action mailed April 5, 2005. In the Office Action, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 were rejected under 35 U.S.C. § 101; and claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 were rejected under 35 U.S.C. § 112, second paragraph.

By this Amendment, Applicants propose to amend claims 1, 2, 4, 7-9, 10, 12, 16, 17, 19, 23, 24, 26, 37, 39, and 42; and cancel withdrawn claims 13-15, 20-22, 27-29, 34-36, 38, and 40. Accordingly, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are pending in this application. The originally-filed specification, drawings, and claims fully support the subject matter of amended claims 1, 2, 4, 7-9, 10, 12, 16, 17, 19, 23, 24, 26, 37, 39, and 42. Thus, this Amendment introduces no new matter.

In the Office Action, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 were rejected under 35 U.S.C. § 101 for being directed to non-statutory subject matter. The Office Action states: "the result yielded by claim 1 (e.g., assessment data) is subjective in nature and depends entirely on the person carrying out the invention." Office Action at page 3. Applicants respectfully disagree, submitting that the claimed invention would produce useful, concrete and tangible results. For example, amended claim 1 recites:

"A method of assessing a culture of an organization for making improvements thereon, comprising the steps of: collecting responses from members of the organization; and performing an assessment process including: compiling the responses into a data format, sorting the compiled responses to identify, generating a report based on the identified theme, selecting a first action corresponding to the identified theme in reply to receiving the report, collecting data reflecting a performance of implementing the first action in the organization, and sorting the collected data to identify an effect of the implemented first action on the organization."

The subject matter recited in amended claim 1 is not subjective and does not depend entirely on the person carrying out the invention. For example, the specification states: “Exemplary themes/issues may include: ‘What themes/issues are repeated throughout the data set?’; ‘What is the frequency of these themes/issues in the data set?’; ‘Are there details which further support these themes/issues in the data set?’” Specification at page 48, lines 19-23. See *also* Figs. 6, 7, and 8. Contrary to the Office Action, a human does not subjectively determine a theme. Instead, a theme is identified based on the collected and compiled responses.

The Office Action further contends that “any potentially significant analysis or data input is gleaned directly from human users, thereby rendering such analysis and data purely subjective.” Office Action at page 4. Applicants disagree. For example, the specification provides that “the present invention may also include a computer implemented or assisted method of analyzing data collected,” adding that “[t]he data includes responses to qualitative questions and quantitative questions” and “calculating averages of the responses to the quantitative questions.” Specification at page 8. The specification further provides “separating the collected data . . . and determining at least one of themes and issues appearing repeatedly in the collected data” and indicates that the step of determining at least one of themes and issues may include “comparing the calculated averages and the responses to the qualitative questions.” Specification at page 9. Applicants submit that such analysis and data are not purely subjective and note that qualitative and quantitative data may be sorted by keywords to identify a theme. Applicants thus submit that claim 1 will produce a useful, concrete, and repeatable result. Independent claims 9, 16, 23, 37, and 39, although of different

scope, contain similar limitations and will thus also produce useful, concrete, and repeatable results. Accordingly, Applicants request withdrawal of the section 101 rejection of claims 1-12, 16-19, 23-26, 37, 39, 41, and 42.

In the Office Action, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 were also rejected under 35 U.S.C. § 112, first paragraph, as failing to comply with the enablement requirement. The Office Action states that “[t]he claim(s) contain subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.” Office Action at page 6. Applicants respectfully disagree. As fully set forth above, the claimed invention is not purely dependent on human subjectivity and would produce a useful, concrete, and tangible result. Accordingly, Applicants request withdrawal of the 35 U.S.C. § 112, first paragraph, rejection of claims 1-12, 16-19, 23-26, 37, 39, 41, and 42.

Also in the Office Action, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 were rejected under 35 U.S.C. § 112, second paragraph, “as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.” Office Action at page 7. The Office Action contends that “the results yielded by claim 1 (e.g., assessment data) is subjective in nature and depends entirely on the person carrying out the invention, thereby rendering the scope of the recited determining and analysis steps unclear.” Office Action at page 7. Applicants submit that amended claim 1 is not subjective and does not depend entirely on the person carrying out the invention. For example, as noted above, the specification provides that “[E]xemplary themes/issues may include: ‘What themes/issues are repeated throughout

the data set?'; What is the frequency of these themes/issues in the data set?'; 'Are there details which further support these themes/issues in the data set?'” Specification at page 48, lines 19-23. See *also* Figs. 6, 7, and 8. The specification further provides that “the present invention may also include a computer implemented or assisted method of analyzing data collected,” adding that “[t]he data includes responses to qualitative questions and quantitative questions” and “calculating averages of the responses to the quantitative questions.” Specification at page 8. The specification adds that the step of determining at least one of themes and issues may include “comparing the calculated averages and the responses to the qualitative questions.” Specification at page 9. Applicants submit that such analysis and data are not purely subjective and do not depend entirely on the person carrying out the invention. Therefore, claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are definite, and withdrawal of the rejections under 35 U.S.C. § 112, second paragraph is requested.

Applicants respectfully request that this Amendment under 37 C.F.R. § 1.116 be entered by the Examiner, placing claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 in condition for allowance. Applicants submit that the proposed amendments of claims 1, 2, 4, 7-9, 10, 12, 16, 17, 19, 23, 24, 26, 37, 39, and 42 do not raise new issues or necessitate the undertaking of any additional search of the art by the Examiner, since all of the elements and their relationships claimed were either earlier claimed or inherent in the claims as examined. Therefore, this Amendment should allow for immediate action by the Examiner.

Finally, Applicants submit that the entry of the amendment would place the application in better form for appeal, should the Examiner dispute the patentability of the pending claims.

In view of the foregoing remarks, Applicants submit that the pending claims 1-12, 16-19, 23-26, 37, 39, 41, and 42 are directed toward statutory subject matter and particularly point out and distinctly claim embodiments of Applicants' invention. Applicants therefore request the entry of this Amendment, the Examiner's reconsideration and reexamination of the application, and the timely allowance of the pending claims.

The Office Action contains characterizations of the claims and the related art with which Applicants do not necessarily agree. Unless expressly noted otherwise, Applicants decline to subscribe to any statement or characterization in the Office Action.

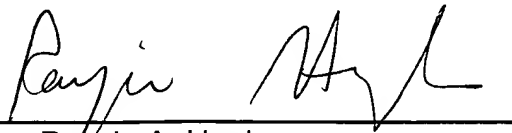
In discussing the specification, claims, and drawings in this Amendment, it is to be understood that Applicants are in no way intending to limit the scope of the claims to any exemplary embodiments described in the specification or abstract and/or shown in the drawings. Rather, Applicants are entitled to have the claims interpreted broadly, to the maximum extent permitted by statute, regulation, and applicable case law.

Please grant any extensions of time required to enter this Amendment and charge any additional required fees to our Deposit Account No. 06-0916.

Respectfully submitted,

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